IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1409 of 1998

in

SPECIAL CIVIL APPLICATION No 7659 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARIJAN DEVA NATHA

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI with MR AR THACKER for Appellant
MR SK PATEL AGP for Respondent No. 1
RULE SERVED for Respondent No. 2
MR HS MUNSHAW for Respondent No. 4

CORAM : MR.JUSTICE J.M.PANCHAL
and

MR.JUSTICE A.M.KAPADIA

Date of decision: 07/11/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. This appeal which is filed under clause 15 of the Letters Patent is directed against judgment dated October 7, 1998, rendered by learned Single Judge in Special Civil Application No. 7659 of 1998 whereby the prayer made by the appellant to direct Mamlatdar, Rajkot Taluka, Rajkot, to consider his application dated July 30, 1998, for permission to convert land bearing S.No. 309 paiki of village Targhadiya, Taluka Rajkot from new tenure to old tenure, is rejected.

2. The Assistant Collector, Rajkot had passed an order dated May 26, 1971 allotting land admeasuring 4 acres from S.No. 309 of village Targhadiya, Taluka Rajkot to the petitioner as new tenure land for the purpose of agriculture. The Revenue Department of Government of Gujarat has issued resolution No. NSHJ-1081-3152-J dated March 11, 1996 authorising the Collector to grant permission to convert new tenure lands into old tenure lands on certain conditions stipulated therein. A copy of the said resolution is produced by the petitioner at Annexure 'A' to the petition. The State Government has also issued another resolution dated August 21, 1996 authorising Mamlatdar to exercise powers conferred on Collector by resolution dated March 11, 1996. In view of these two resolutions, the petitioner submitted an application dated March 11, 1996 and requested the Mamlatdar, Rajkot Taluka to permit conversion of land from new tenure to old tenure. The application submitted by the petitioner is produced by him at Annexure 'C' to the petition. On examination of the application and record, the Mamlatdar found that the land is situated within the limits of Rajkot Urban Development Authority constituted under the provisions of the Gujarat Town Planning and Urban Development Act, 1976. At the relevant time the matter was pending for consideration of the Government as to whether land falling within the limits of Rajkot Urban Development Authority are covered by Government resolution dated March 11, 1996 or not but no instructions were received from the Government. Therefore, the Mamlatdar, Rajkot Taluka rejected the application submitted by the petitioner vide order dated August 11, 1998 which is produced at Annexure 'D' to the petition. Before the order was passed by the Mamlatdar, Rajkot Taluka, the petitioner had submitted an application dated July 30,

1998 to the Collector, Rajkot requesting him to grant permission for conversion of the land from new tenure to old tenure. A copy of this application is produced by the petitioner at Annexure 'E' to the petition. The Collector, Rajkot also rejected the application submitted by the petitioner for conversion of the land from new tenure to old tenure vide order dated August 19, 1998 on the ground that the land was situated within the limits of Rajkot Urban Development Authority and Government resolution dated March 11, 1996 does not provide for exclusion of land situated within the limits of Rajkot Urban Development Authority. A copy of this order is produced at Annexure 'F' to the petition.

3. It is the case of the petitioner that Government resolution dated March 11, 1996 was applicable to lands forming part of urban agglomeration of Ahmedabad, Surat, Vadodara, Rajkot, Bhavnagar and Jamnagar Cities and as the land in question was not forming part of urban agglomeration of Rajkot, neither the Mamlatdar, Rajkot Taluka nor the Collector, Rajkot was justified in rejecting the application submitted by the petitioner for conversion of land from new tenure to old tenure. Under the circumstances, the petitioner filed Special Civil Application No. 7659 of 1998 and prayed the Court to issue a writ of mandamus and/or a writ or order to direct the respondent No.3 to consider the application dated July 30, 1998 in the light of contents of Government resolution dated March 11, 1996.

4. Though the respondents were duly served and represented by learned Assistant Government Pleader, no reply was filed by any of the respondents controverting the averments made in the petition.

5. The learned Single Judge, after hearing the learned counsel for the parties, has dismissed the petition by impugned judgment giving rise to the present appeal.

6. Mr. J.R. Nanavati, learned counsel for the appellant, submitted that clause 4 of the Government resolution dated March 11, 1996 clearly provides that the lands which are situated within the area of urban agglomeration of Ahmedabad, Surat, Vadodara, Rajkot, Bhavnagar and Jamnagar cities are not covered by clauses 1, 2 and 3 of the said resolution and as the land in question does not form part of urban agglomeration of Rajkot, the application submitted by the appellant ought to have been accepted. According to the learned counsel, the Government resolution dated March 11, 1996 does not

refer to the land which is situated within the limits of Rajkot Urban Development Authority constituted under the Gujarat Town Planning and Urban Development Act, 1976 and, therefore, the learned Single Judge was not justified in rejecting the petition on the ground that lands which are situated in urban area and have potential use for urban development cannot be permitted to be converted from new tenure to old tenure. What was emphasised by the learned counsel for the appellant was that the land in question is situated within the limits of Rajkot Urban Development Authority and as the same is not excluded from the purview of the Government resolution dated March 11, 1996, the appeal should be allowed.

7. Mr. S.K. Patel, learned A.G.P. contended that a reasonable reading of the Government resolution dated March 11, 1996 makes it manifest that lands which are situated in the urban area and have potential use for urban development cannot be permitted to be converted from new tenure to old tenure and, therefore, the appeal should be dismissed. According to the learned counsel for the respondents, though the land in question falls within the limits of Rajkot Urban Development Authority and is not forming part of urban agglomeration of Rajkot, clause 4 of the Government resolution excludes convertibility once the area is declared as urban land or earmarked for development as urban development area and, therefore, the judgment impugned in the appeal should be upheld.

8. We may state that the Mamlatdar, Rajkot Taluka has filed affidavit-in-reply in appeal justifying his order rejecting the application submitted by the appellant and, inter alia, pleaded that the power of attorney holder of the appellant had not produced any evidence to show that the land in question was not falling within the urban agglomeration of Rajkot and, therefore, the appellant is not entitled to the reliefs claimed in the petition.

9. We have heard the learned counsel for the parties and taken into consideration the documents forming part of the petition as well as the affidavit-in-reply filed by respondent No.3 at the appeal stage.

10. It is not in dispute that the Government of Gujarat by resolution dated March 11, 1996 has permitted conversion of new tenure lands into old tenure lands on certain conditions being satisfied. Clauses 4 and 5 of the said resolution which are relevant for our purpose

read as under:

"(4) The provisions of clauses 1 to 3 of the resolution will not be applicable to the lands forming part of urban agglomeration of Ahmedabad, Surat, Vadodara, Rajkot, Bhavnagar and Jamnagar cities;

(5) The provisions of clauses 1 to 3 of the resolution also will not be applicable to the lands situated within the limits of Municipalities constituted under the Gujarat Municipalities Act."

11. A bare reading of the above referred to clauses makes it evident that what is sought to be excluded is (i) the lands forming part of urban agglomeration of Ahmedabad, Surat, Vadodara, Rajkot, Bhavnagar and Jamnagar and (ii) the lands situated within the limits of Municipalities.

12. The phrase "urban agglomeration" was defined in Section 2 (n) of the Urban Land (Ceiling & Regulation) Act, 1976 which is now repealed. According to clause (n), "urban agglomeration" in relation to any State or Union Territory specified in column (1) of Schedule I meant the urban agglomeration specified in the corresponding entry in column (2) thereof and included the peripheral area specified in the corresponding entry in column (3) thereof. From the provision of Schedule I to the rpealed Act it is evident that the lands situated within peripheral area of 5 Kms. of Rajkot Municipal Corporation would be part of urban agglomeration of Rajkot. An urban agglomeration is made up of main town together with the adjoining areas of urban growth and is treated as one urban spread. The population covered by such spreads is categorised as urban. Each such agglomeration may be made up of more than one statutory town, adjoining one another such as a Municipality and the adjoining Cantonment, etc. However, it is not the case of the respondents that the land in question forms part of urban agglomeration of Rajkot which is excluded from the purview of Government resolution dated March 11, 1996. It is also not the case of the respondents that the land in question was situated within the limits of Rajkot Municipality. It may be stated that Rajkot Urban Development Authority is constituted by the State Government under Section 5 of the Gujarat Town Planning and Urban Development Act, 1976 and area for the purpose of securing planned development is also specified by the State Government. If it is held that the land falling

within the limits of Rajkot Urban Development Authority is also covered by clauses 4 and 5 of the Government resolution dated March 11, 1996 it would amount to rewriting the Government resolution which is not permissible to a Court of law. It is well settled that the executive must be rigorously held to standards by which it professes its action should be judged. In view of the provisions of clause 4 of the resolution, the order rejecting permission to convert land to old tenure land cannot be sustained. The contention that the power of attorney holder of the appellant had not produced any evidence to establish that the land in question did not fall within the urban agglomeration of Rajkot alongwith the application dated July 30, 1998 and, therefore, the Collector was justified in rejecting the said application is devoid of merits. It was the specific case of the appellant that his case was covered within the four corners of the Government resolution dated March 11, 1996 and, therefore, entitled to conversion of the land as provided therein. Therefore, it was for the competent authority to point out that he was not entitled to any relief in terms of the said resolution as the land was forming part of urban agglomeration of Rajkot.

13. On overall view of the matter, we are satisfied that the Mamlatdar was not justified in rejecting the application submitted by the appellant for conversion of his land from new tenure to old tenure on the ground that the land was situated within the limits of Rajkot Urban Development Authority.

14. The result of the above discussion is that the judgment rendered by the learned Single Judge will have to be set aside and the petition will have to be accepted.

15. For the foregoing reasons, the appeal succeeds. The judgment dated October 7, 1997 rendered by the learned Single Judge in Special Civil Application No. 7659 of 1998 is set aside and quashed. So also the order dated August 11, 1998 passed by the Mamlatdar, Rajkot Taluka and the order dated August 19, 1998 passed by the Collector, Rajkot District, Rajkot, rejecting the prayer made by the appellant to permit him to convert his land from new tenure to old tenure, produced at Annexure 'D' and 'F' respectively to the petition are also quashed and set aside. The Mamlatdar, Rajkot Taluka is directed to reconsider the application submitted by the appellant on July 30, 1998 in the light of the contents of the Government resolution dated March 11, 1996 as well as observations made by this Court in this judgment. The

Mamlatdar, Rajkot Taluka shall reconsider the application submitted by the appellant as early as possible and preferably within two months from the date of receipt of the writ. Special Civil Application No. 7659 of 1998 stands allowed. Rule is made absolute therein with no orders as to costs. The appeal is allowed with no orders as to costs.

(J.M. Panchal, J.)

7.11.2000. (A.M. Kapadia, J.)